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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1901~~ 1902.

No. ~~189~~ 26.

THE PACIFIC STEAM WHALING COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ALASKA.

FILED AUGUST 18, 1900.

(17,879.)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1901.

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THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ALASKA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 23, 1901.

1 These proceedings were commenced in the United States district court in and for the district of Alaska, by the filing of a petition after service of the same had been made upon the United States district attorney in and for the district of Alaska, as will appear from the restraining order herein, and the following is a full copy of the record and proceedings had in said matter before the judge of the said court from the time of filing and serving said petition until the final judgment rendered in said court, together with the other proceedings in perfecting the appeal to the United States Supreme Court, to wit:—

2 In the District Court of the United States for the District of Alaska.

In the Matter of the Application of THE PACIFIC STEAM WHALING COMPANY for a License for the Steamship "Wolcott," the Steamship "Excelsior," the Steamship "Newport," and the Steamer "Golden Gate," and Canneries, and Protest Thereon.

Comes now The Pacific Steam Whaling Company, a corporation, organized and existing under the laws of the State of California, and respectfully represents:—

I.

That the said petitioner is and for more than one year last past has been the owner of the steamships Wolcott, Excelsior, Newport and Golden Gate, each of which are American vessels registered in the United States custom-house, at the port of San Francisco in the State of California, the same being the home port of said steamships. The said steamship Wolcott has a net tonnage of 168.54 tons custom-house measurement, the steamship Excelsior 364.61 tons custom-house measurement, the steamship Newport 218.12 tons, custom-house measurement and the steamship Golden Gate 28.62 tons custom-house measurement.

II.

That the said steamships and each of them are employed by your petitioner in the following business and not otherwise, namely: in the transporting of freight and passengers between the different ports in the district of Alaska, doing a local business in said district in the prosecution of her voyages to and from different ports in the district of Alaska and carrying freight and passengers for hire, and the said steamships and each of them at least during the summer and fall seasons of the year beginning July the 1st, 1899, expect to follow up and carry on the business hereinbefore stated, unless other steamers are substituted in the place of some one or all of said steamships.

III.

Your petitioner denies that any license is necessary in order to authorize your petitioner to use the said steamships mentioned

herein in the prosecution of said business as above set forth. Nevertheless, your petitioner, having in view the severe and extremely stringent penalties enacted by the provisions of an act entitled "An act to define and punish crime in the district of Alaska, and to provide a code of criminal procedure for said district," approved March the 3rd, 1899, makes this its protest, and prays the action of the court in the premises.

3 IV.

Your petitioner further protests that your petitioner is not bound to procure any license or to pay any license fee for the doing of the business aforesaid, with respect to the said steamships or either of them, or any steamships to be substituted for the same or either of the same, and states the following as its grounds of protest in the premises, namely:

1. That the said steamships and each of them are the property of your petitioner and the same and each of the same are taxed to your petitioner, the owner of the same at the said port of San Francisco, which said tax is paid in the said State of California, and the same, or any one of said steamships, are not subject to the payment of license tax in the district of Alaska.

2. That if the said provisions of said act of section 460, etc., should be so construed *so* as to require the procurement of a license, and payment of a license tax by your petitioner with respect to the said steamship- or either of the same, then the said provision so construed would cause your petitioner to pay a double tax, and amounts to the taking of the property of your petitioner without due process of law, and further that the payment of a license fee, required by said provisions of said act, in so far as it purports to require the payment of $1.00 per ton per annum, on net tonnage, custom-house measurement of each vessel engaged in said local business, *are* unreasonable, exorbitant, and oppres-ive, and amounts to the taking of the property of your petitioner without due process of law.

3. That the title of said act, reading "An act to define and punish crime in the district of Alaska and to provide a code of criminal procedure for said district," and the introductory clause of said act, reading, "That the penal and criminal laws of the United States of America and the proceedings thereunder relating to the district of Alaska, shall be as follows," have no reference to the granting of a license for the prosecution of a lawful business, and the provisions of said act, in so far as they purport to require the payment of license fees, are not within the scope of the said title, or of the said introductory clause, and are vague, unintelligible and doubtful, so that it cannot be reasonably inferred that Congress intended to require the payment of any license fee whatever as the prerequisite to the doing of a lawful business in said district.

4. That sections 460 and 461 of said act are contrary to the Constitution of the United States and are null and void, and are especially contrary to the provision of section 8 of article 1, and section 9 of article 1, of said Constitution, in that said sections 460 and 461

impose a tax impost and excise not uniform throughout the United States, or territories thereof.

V.

Your petitioner asks and prays this court that it be entitled to proceed with the transacting and carrying on of the business aforesaid, the same as though said law had not been enacted or passed, or, if this honorable court requires first the depositing of a sum of $779.88, being $1.00 per ton on net tonnage, custom-house measurements of said steamships with the clerk of this court, that said payment, or deposit be made under protest, and that your petitioner be held as not conceding that any license fee is necessary or proper in the premises, such payment and deposit being subject to the protest hereby made, and said payment and deposit made only in order to avoid the serious and irreparable damage that would follow to your petitioner in case its said business should be interfered with
4 by the officials of the United States for the district of Alaska, who should attempt to carry out the provisions of said act against your petitioner, by reason of the non-payment of the license fee aforesaid.

Wherefore, your petitioner prays:

1. That the said court first try and determine the matter as to whether or not it is necessary for the said petitioner to pay into court any license or sum of money whatsoever as provided under said act.

2. That if said court shall determine that your petitioner with respect to said steamships Wolcott, Excelsior, Newport, and Golden Gate, should first pay the said license fee required under said act in your court, before the trial and determination of said cause and matters herein set out, that the same be held by the clerk until the trial and determination of the matters and facts set forth herein.

3. That if the court determines that a license in the meantime should be granted to the said steamships or either of them as ocean and coastwise vessels, and doing local business for hire, plying in Alaskan waters, that such license be so granted and said money so held by the clerk of the court under protest as aforesaid subject to the further action of this honorable court.

Your petitioner further shows to this honorable court that it is engaged in the district of Alaska in the business of carrying on salmon canneries at the following-named points, to wit: Hunter's bay, Orca, Kenai, Uyak bay, Chignik and Nash-ag-ak and will be and continue in said business for the next year, beginning July the 1st, 1899, and expects to carry on and conduct said salmon canneries hereinbefore stated in the same manner as it has heretofore.

I.

Your petitioner states that on account of the run and catch of salmon it is impossible for your petitioner to state with any degree — certainty the number of salmon that will be caught, or may be purchased by your petitioner for the purpose of canning at said canneries for the next fiscal year, commencing July the 1st, 1899, or as

to how many cases of salmon your petitioner will be able to can or put up during said year; that the run of salmon in and upon the waters, which are used or can be used by your petitioner, in supplying said canneries with salmon varies each year to such an extent that it is impossible for your petitioner or for this honorable court to ascertain with any degree of certainty the number of cases of salmon that your petitioner will be able to put up any one year.

2. Your petitioner denies that any license is necessary in order to authorize your petitioner to engage in the business mentioned herein, and for the prosecution of the same. Nevertheless your petitioner having in view the severe and extremely stringent penalties enacted by the provisions of an act entitled "An act to define and punish crime in the district of Alaska, and to provide a code of criminal procedure for said district" approved March 3, 1899, makes this its protest and prays the action of the court in the premises. Your petitioner further protests that your petitioner is not bound to procure any license or pay any license fee for the doing of the business aforesaid at said places or either of them and states the following as its ground of protest in the premises, namely:

First. That it is impossible for your petitioner to furnish proof of the number of cans or cases of salmon that it will be able to put up or can during the next year, beginning July the 1st, 1899, and this honorable court from any evidence or testimony, which this petitioner is able or will be able to furnish it cannot or will not be able to arrive at the amount of license which your petitioner should pay under said act of Congress for the purpose of carrying on and prosecuting said business set forth herein.

5 Second. That the payment of a license fee required by said provisions of said act in so far as it purports to require the payment of four cents per case on salmon canned by canneries operating in said district, is ambiguous, uncertain, unreasonable, exorbitant and oppressive and amounts to the taking of the property of your petitioner without due process of law.

Third. And your petitioner further refers to and adopts, and makes part of this petition pertaining to canneries the third cause of unconstitutionality of said law set forth in that part of this petition herein referring to steamships.

Fourth. That sections 460 and 461 of said act are contrary to the Constitution of the United States and are null and void. And are especially contrary to the provisions of section 8 of article I and section 9 of article I of said Constitution in that said section 460 and 461 impose a tax impost and excise not uniform throughout the United States or the Territories thereof.

Wherefore your petitioner prays:—

1. That the said court first try and determine the matter as to whether or not it is necessary for the said petitioner to pay into court any license or sum of money whatsoever as provided under said act.

2. That if said court shall determine that your petitioner with respect to the said business of canning salmon should first pay the

said license fee, or any license fee, required under said act into this court before the trial and determination of said cause, that the same be held by the clerk until the trial and determination of the matters and facts set forth herein.

3. That if the court determines that a license in the meantime should be granted to the said petitioner to carry on said canning business, that such license be granted subject to the said protest and that the said license be so granted and its moneys so held by the clerk of this court under protest as aforesaid subject to the further action and order of this honorable court.

PACIFIC STEAM WHALING COMPANY,
By JNO. R. WINN, *Its Attorney.*

JNO. R. WINN,
Attorney for Petitioner.

UNITED STATES OF AMERICA, } ss:
District of Alaska, }

I, Jno. R. Winn, being first duly sworn say: That I am the attorney in the district of Alaska for the petitioner in the within-entitled petition and protest, and make this verification on behalf of said petitioner and for the reason that the officers of said company are absent from Sitka, I have read the foregoing petition and protest and know the contents thereof, and the same is true as I verily believe.

JNO. R. WINN.

Subscribed and sworn to before me this 5th day of July, 1899.
[SEAL.] WALTON D. McNAIR,
Notary Public for Alaska.

Endorsed: Petition. Filed July 6, 1899. Albert D. Elliot, clerk.

6 And afterwards the following order was made & entered in said cause & is in words & figures following, to wit:

In the District Court of the United States for the District of Alaska.

In the Matter of the Application of THE PACIFIC STEAM WHALING COMPANY for a License for the Steamship "Wolcott," the Steamship "Excelsior," the Steamship "Newport," and the Str "Golden Gate," and Salmon Canneries, and Protests Thereon.

This matter coming on for hearing on the petition, protest and motion of The Pacific Steam Whaling Company, the above corporation, and it appearing to the court that a copy of said petition and protest has been served upon the United States district attorney for the district of Alaska, and according to the suggestion of the court herein, the said Pacific Steam Whaling Company, has deposited in the said court with the clerk thereof the sum of seven hundred, seventy-nine dollars and eighty-eight cents, being at the rate of $1.00 per ton, net tonnage, custom-house measurement of the steamship "Wol-

cott," steamship Excelsior, steamship Newport and steamship Golden Gate combined, and the court being fully advised in the premises, does, and it is hereby ordered, that the said Pacific Steam Whaling Company be, and the same is hereby permitted, licensed and authorized, during the pendency of these proceedings, and until the further order of this court, to run and operate the said steamships above mentioned, or any other steamships or steamship in the place or stead of the same in the transportation and carrying of freight and passengers for hire, and to do a local business in the transportation of freight and passengers for hire between any and all ports and upon any and all waters in the district of Alaska and between any and all ports in Alaska, on the one side and ports out of Alaska on the other side. And that the sum of $779.88 is deposited with the clerk of this court pending a hearing and final decision upon said petition and protest filed herein, and the clerk of this court is hereby instructed and ordered to hold the said amount in his possession subject to the final order to be made herein.

And it further appearing to this court that the said petitioner is now and for some time past has been engaged in the salmon packing and running and carrying on salmon canneries at the following-named places in the district of Alaska: Hunter's bay, Orca, Kenia, Uyak bay, Chignik, and Nushagak, and the said petitioner is hereby authorized, licensed and permitted, to carry on said business at said points and any other points in Alaska until the further order of this court, and until the further order and decision herein, and until the court is fully advised as to whether or not the said business should be licensed, and if so the amount to be charged and paid therefor by said petitioner.

Done in open court this 6th day of July, 1899.

CHAS. S. JOHNSON, *Judge.*

7 And afterwards on December 2, 1899, the following affidavit was filed in said cause and is in words and figures following, to wit:

STATE OF CALIFORNIA,)
City and County of San Francisco,) ss:

Edwin L. Griffith being first duly sworn, deposes and says: That he is the manager of the Pacific Steam Whaling Company, a corporation organized and existing under the laws of the State of California. That during the fishing season of 1899, the said Pacific Steam Whaling Company was engaged in the business of taking salmon in the waters adjacent to the Alaskan coast, and in operating salmon canneries at various places in the district of Alaska. That since the 30th day of June, 1899, the said Pacific Steam Whaling Company has canned at the various salmon canneries operated by it in said district 98,064 cases of salmon. That said corporation has not since the said 30th day of June, 1899, canned at the salmon canneries operated by it in said district any quantity of salmon in excess of said 98,064 cases.

That said Pacific Steam Whaling Company has not at any time since the said 30th day of June, 1899, operated any salmon salteries, fish-oil works or fertilizer works at any point in the said district of Alaska.

EDWIN L. GRIFFITH.

Subscribed and sworn to before me this 23 day of November, 1899.

J. S. MANLEY,

[SEAL.] *United States Commissioner for the Northern District of California, at San Francisco.*

(Endorsed:) Affidavit of Edwin L. Griffith, regarding salmon packed by Pacific Steam Whaling Company in Alaska. Filed December 2nd, 1899. Albert D. Elliott, clerk.

8 And afterwards the following order was made & entered in said cause & is in words & figures following, to wit:

In the District Court of the United States in and for the District of Alaska.

In the Matter of the Application of THE PACIFIC STEAM WHALING COMPANY for a License for the Steamships Wolcott, the Steamship Excelsior, the Steamship Newport, and the Steamer Golden Gate, and Canneries, and Protest Thereon.

Order.

This matter coming on for hearing on the above application and petition and upon the proof offered by the Pacific Steam Whaling Company as to the number of cases of salmon that the said company during the fishing season of 1899, canned in Alaskan waters, and waters adjacent to the Alaskan coast in said district of Alaska, and upon the proofs offered, being the affidavit of Edwin L. Griffith, manager of the said Pacific Steam Whaling Company, which said affidavit is filed herein; that the sum of 98,064 cases have been canned covering a period of time from the 30th day of June, 1899, to the date hereof, and at the rate of four cents per case, makes the total sum of $3,922.56.

The court being fully advised in the premises it is hereby ordered and decreed and the court does hereby order and decree that the said amount be deposited in the registry of the court with the clerk thereof, and there to remain until the final determination of this application and suit in this court or in any court to which the said cause may be appealed, and to only be paid out upon an order duly made after the final determination of this matter as aforesaid, but that the said Pacific Steam Whaling Company be permitted and the said company is hereby authorized to continue in said business of salmon canning until the further order of this court, and the clerk of this court is hereby ordered to hold the certified check for the sum of three thousand nine hundred and twenty-two and $\frac{56}{100}$

($3,922.56) dollars, payable to John R. Winn, and endorsed to Albert D. Elliot, said clerk, subject at all times to the terms and conditions of this order. Done in open court this 2nd day of December, 1899.

CHARLES S. JOHNSON, *Judge.*

Endorsed: Order of court. Filed Dec. 2, 1899. Albert D. Elliot, clerk.

9 And afterwards the following opinion was rendered by the court herein & is in words & figures following, to wit:

In the District Court of the United States for the District of Alaska

A. W. CORBUS
vs.
THE ALASKA TREADWELL GOLD MINING CO.

JOHN W. ROBERTS
vs.
C. F. MEYER ET AL.

CHARLES STEWART
vs.
THE WASHINGTON AND ALASKA STEAMSHIP CO.

And protests by:
The Alaska Steamship Company,
The Pacific Coast Steamship Co., (3)
The Pacific Coast Company,
The Pacific Steam Whaling Co.,
The Alaska Packers' Association.

1. Injunction.—An injunction by one stockholder against the corporation to restrain the latter from applying for a license and paying the tax or fee imposed by law for conducting a business upon which the Congress has imposed such *such* tax, will not lie.
2. Practice.—Equity will not interfere where the parties have a plain and adequate remedy at law.
3. Same.—To induce a court of equity to take jurisdiction of a suit on the ground that a multiplicity of suits is threatened and irreparable injury thereby about to be sustained, the facts must be so plead that the court can reasonably infer that such allegations are true.
4. Protests.—A mere protest against the payment of a license tax on the ground that the law seeking to impose the same is unconstitutional will not give the court jurisdiction to try and determine the constitutionality of the law.

Malony & Cobb for Corbus.
M. F. McEnany for Alaska Treadwell G. M. Co.,
John R. Winn, for Roberts,
F. D. Kelsey for Meyer *et al.*

John G. Heid for Stewart,
Lyons & Lyons for Washington & Alaska Steamship Co.,
John R. Winn, for the P. C. Co., P. C. S. S. Co., and P. S. W. Co.,
Arthur K. Delaney for Alaska Packers' Association.
R. W. Jennings, for the Alaska Steamship Co.
10 Rob't A. Friedrich, U. S. attorney, *amicus curiæ*.

JOHNSON, *District Judge:*

The following cases were, at one and the same time, argued and submitted to the court for decision and determination. A. W. Corbus, *vs.* The Alaska Treadwell Gold Mining Co., John W. Roberts, *vs.* C. F. Meyers *et al.*, Charles Stewart *vs.* The Washington & Alaska Steamship Company, and protests against the payment of the license tax by the Alaska Steamship Company, the Pacific Coast Company, the Pacific Coast Steamship Company, the Pacific Steam Whaling Company, and the Alaska Packers' Association. The object and purpose of each suit and each protest being the same, that is, to determine the constitutionality of the provisions of chapter 44 of the act of Congress of March the 3rd, 1899, entitled an "Act to define and punish crimes in the district of Alaska and to provide a code of criminal procedure for said district," they may all be disposed of together.

As to the forms of action, they may be divided into two classes. The first three are suits in equity, wherein a stockholder of the defendant corporation, or a copartner of the defendant copartnership, seeks to enjoin the corporation or copartnership from applying for a license, or paying the license fee or tax, required by said act to be paid as a condition precedent to conducting their respective lines of business. The remaining cases are simple protests against paying the license tax imposed by law, principally on the ground that the same is unconstitutional, and praying that they may pay the amount of the license tax into the registry of the court, there to be held until the final action of the court on their protests. In each and all of the cases the license fee or tax has been paid to the clerk, of the court, there to remain, by order of the court, until the final determination of these suits and protests.

In the case of Corbus *vs.* The Alaska Treadwell Gold Mining Company, the plaintiffs seek to enjoin the defendant corporation from paying the license tax imposed for operating certain quartz stamp mills and conducting a mercantile establishment. In Stewart *vs.* The Washington & Alaska Steamship Company, the injunction is sought for the purpose of restraining the payment of the license for an ocean and coastwise vessel, doing local business for hire, plying in Alaskan waters, the property of the defendant corporation. Roberts *vs.* Meyer *et al.*, is identical with the last-named case except that the owner of the vessel in question is a company instead of a corporation, one member of which seeks to enjoin the other members. The protests of the Alaska Steamship Co., the Pacific Coast Co., and the Pacific Coast Steamship Co., are against the payment of licenses on steamers and wharves, while the protests of the Pacific Steam Whaling Co., and Alaska Packers' Association, are directed against the license

imposed for operating steamboats, and canning and salting salmon in Alaska.

To each of the three bills a demurrer to the equity thereof was interposed by defendants. The attorney- for the defendants however, made no arguments, and filed no briefs in support of their respective demurrers. Copies of the bills having been served upon the district attorney, he asked and obtained leave of the court to appear as *amicus curia* and in that capacity, and disclaiming any intention to in any manner represent or bind the United States, he denied that the court had any jurisdiction under any of the forms of action presented, to hear and determine the cases upon their merits. He denied the right or power of the court to enjoin the defendants in any case from paying the license in question, and he also argued
11 in support of the constitutionality of the law, and offered a brief in support of both contentions.

It is necessary then, to first ascertain whether the court has jurisdiction, under the pleadings in any of these cases, to try and determine the constitutionality of the law in question.

In the three equity suits the plaintiffs rely largely, if not wholly upon the case of Pollock *vs.* Farmers' Loan & Trust Co., 157 U. S. 229, and 158 *id.* 601. It is contended that the suits at bar are identical with the Pollock case, and that the Supreme Court having in that case decided that a stockholder might enjoin a corporation from paying a tax alleged to be unconstitutional, that this court is bound thereby in these cases. If it be conceded that the cases are identical and that the decision in the Pollock case is entitled to the breadth of construction contended for by plaintiffs' counsel, then it will not be denied that this court is bound thereby. But are the cases identical? We think not. An examination of the bills before us discloses the existence of corporations and a copartnership formfor the simple purpose, in the one instance of mining and milling ore for the precious metals therein contained, and in the other two cases for operating steamers in Alaskan waters as common carriers. It is not claimed that any trusts have been committed to the respective defendants, their only obligation and duty being to their stockholders. And the threatened multiplicity of suits is charged as "suits and prosecutions for the violation of said act," and the irreparable injury threatened and complained of would be incurred by "defending said suits and avoiding the fines and forfeitures provided by said act." In Pollock *vs.* Farmers' Loan & Trust Co., the bill alleged "that under and by virtue of the powers conferred upon the company, it had from time to time taken and executed, and was holding and executing, numerous trusts committed to the company by many persons, copartnerships, unincorporated associations, and corporations, by grant, assignment, devise and bequest, and by orders of various courts, and that the company now hold as trustee for many minors, individuals, copartnerships, associations, and corporations, resident in the United States and elsewhere, many parcels of real estate situated in various States of the United States and amounting in the aggregate to a value exceeding five millions of dollars, the rents and income of which real estate collected and re-

ceived by said defendant in its fiduciary capacity annually exceeded the sum of two hundred thousand dollars." The bill further shows "that voluntary compliance with the income-tax provisions would expose the company to a multiplicity of suits, not only by and on behalf of its numerous shareholders, but by and on behalf of numerous minors and others for whom it acts in a fiduciary capacity."

Other radical differences appear between the bills under consideration, and that in Pollock *vs.* Farmers' Loan & Trust Co.; but these are sufficient of themselves to place the two on an entirely different footing. Indeed, it was because of these allegations in the bill in the Pollock case, and which are not found in the bills before us, that the Supreme Court determined it had jurisdiction in that case. The language of the syllabus, which embodies the judgment of the court upon that point, reads as follows: "Such a bill being filed by a stockholder to prevent a trust company from voluntarily making returns for the imposition and payment of a tax claimed to be unconstitutional, and on the further ground of threatened multiplicity of suits and irreparable injury, * * * the court will proceed to judgment on the merits."

A mere allegation in the bill that a multiplicity of suits is threatened is not sufficient to induce a court of equity to take jurisdiction of the suit.

12 The facts must be pleaded in such manner that the court can reasonably infer that such danger is threatened and such suits liable to be brought. This is not only sound in principle, but is sustained by the authorities. Schulenberg-Boeckeler Lumber Co. *et al. vs.* Town of Hayward *et al.*, 20 Fed. Rep. 422. An examination of the bills before us, in the light of the law governing the matters complained of, discloses the fact that no such multiplicity of suits and no such irreparable injury as is contemplated in law or in equity, is threatened or is possible.

But we do not concede that even in the Pollock case the Supreme Court holds that the plaintiff, as a matter of course, had the right to enjoin the defendant from paying the tax alleged to be unconstitutional. The Chief Justice in passing upon this feature of the case, uses this language: "The objection of adequate remedy at law was not raised below, -or is it now raised by appel-ees, if it could be entertained at all at this stage of the proceedings, and, so far as it was within the power of the Government to do so, the question of jurisdiction, for the purposes of this case, was explicitly waived on the argument."

The court was induced to some extent, no doubt, to hear the case upon its merits on the ground of public policy. At least Assistant Attorney General Whitney was constrained to waive all objections to this form of action on that ground, as is evidenced by the following language used by him in his argument of the case:

"The method by which the questions are presented in the Pollock and Hyde cases was not chosen with the consent of the Government. The corporations have ample remedy at law, either by standing on the defensive, or by paying the tax under protest and suing to recover the amount paid. Plaintiffs would be sufficiently

protected by decree restraining the corporations from voluntary payment. Yet the bills do not allege that the corporations intend to pay voluntarily. No injunction, it it believed, has ever been granted against the payment of a tax to the United States Government; or against the execution of a law of the United States on the ground that the law was unconstitutional. It is believed that in no case can such an injunction properly be granted; and it is regarded as important not to break the chain of precedent against such relief. These objections, however, are not jurisdictional in the strictest sense. * * * In view of the great public interest aroused, and of the fact that no cases in proper form are now pending, these objections are waived on behalf of the Government, so far as it is in the power of its officers to waive them."

It can avail nothing for me to here quote from the very able dissenting opinion of Justices White and Harlan on this branch of the Pollock case. Their opinion, with authorities cited, leads me to the conclusion that had the question of jurisdiction been raised in the court below, and insisted upon in the Supreme Court, the case would not have been heard upon its merits. And in the cases at bar the district attorney, so far as he had the right to do so, the Government not being a party to the suits, raised not only the question of the jurisdiction of the court because the plaintiffs had a plain, speedy and adequate remedy at law, but insisted that the suits were of a friendly nature, collusive in character, and brought for the sole purpose of conferring jurisdiction upon the court, to the end that the defendants might escape paying the license fee imposed by law. And when all the facts are taken together as disclosed by the record, some color is lent to the latter contention. Take the case of Corbus *vs.* The Treadwell Company; the bill was filed July 17th, the subpœna served July 19th, commanding the defendant to answer the bill within twenty days. No appearance was made by defendant, however, and no pleading filed, until November 15th, nearly four months
13 after the filing of the bill, and not until about the time the matter was called up for hearing, when a demurrer was interposed. Counsel for defendant did not contend for his demurrer; made no argument and filed no brief in support of the same. And in the very nature of the case the interests of the plaintiff and defendant are identical. Then if the object and purpose of the suit is solely to test the constitutionality of the law without first paying into the United States Treasury the amount of the license tax, and there can be no other object; and if the court will sustain the plaintiff and enjoin the defendant as prayed; how is the private citizen to avail himself of a similar remedy? Who shall enjoin him and save him from paying his tax, until the constitutionality of the law is determined? And if he cannot avail himself of this manner of suit, why should corporations or copartnerships be permitted to do so? Why should not corporations and individuals have and be permitted to exercise identically the same legal rights and remedies under the law?

It is admitted in all the bills and protests now being considered

that the respective plaintiffs have a plain remedy at law by resisting the enforcement of the statute in question. But they contend that the fines and penalties imposed are so severe they dare not pursue that course. When the Congress passed the law in question they also passed and made a part of this very chapter 44 the following provision found in section 481:

"That in any case where a conviction occurs, except in a case of murder or rape, the court may, when in its opinion the facts and circumstances are such as to make the minimum penalty provided in this act manifestly too severe, impose a less penalty, either of fine or imprisonment, or both: provided: that in any such case the court shall cause the reason for its action to be set forth at large on the record in the case."

It would seem the Congress had in view the provisions in this very chapter for the minimum penalty in all other criminal cases is extremely low. And while it is not a part of the record of this case, it is a fact well known to every attorney appearing in these cases that the court has repeatedly exercised the power by that section vested in it, and has imposed a minimum fine of but one dollar in many cases arising under the provisions of this chapter. In view of the existence of this law, the plaintiffs can have nothing to fear from the severe penalties imposed, if they are acting in good faith and with an honest purpose to test the constitutionality of the law, intending if the same shall be sustained, to then comply with its provisions.

As to those persons appearing by protests only, it is the anomalous contention that the papers on file are both applications for, and protests against the issuance of licenses. That is to say, they are applications for a license if the court shall determine that the business is engaged in by the plaintiffs respectively, subject them to the payment of a tax. And they are protests on the grounds that the several lines of business engaged in by the protestants are not subject to license and taxation, principally because the law attempting to impose the tax is unconstitutional and void. It is further contended by them that in passing upon all applications for license under this law the court acts judicially and therefore has the right to and must pass upon the constitutionality of the law itself. It is not necessary to determine whether in passing upon applications for licenses the court acts judicially, for if we concede that it does so act, it is nevertheless perfectly clear that the petitioner can only allege in his petition those things required by the act itself to be set up, showing the applicant to be entitled to the license prayed for, and if extrinsic matter is pleaded, such as denying the constitutionality of the law itself, the court is not required, nor in our judgment permitted to take judicial notice of such ex-
14 trinsic matter. An officer authorized to issue marriage licenses may be said to act judicially in determining whether the facts set up by the applicant for such license entitles him to receive the same, but it would hardly be contended that the applicant could deny the constitutionality of the law governing such matters, and require the officer to determine that question.

If this were a court of last resort we might feel constrained to seek some means by which the constitutionality of the law might be passed upon. The issue should be settled at the earliest possible moment. But we are powerless to finally settle it, even if we would, and we do not believe the question is legally before us. The giving to every one who may feel himself aggrieved the right to enjoin payment of a tax imposed upon him by the Congress, is fraught with so much danger, and it is so at variance with the policy of our Government and the decisions of our courts that we do not feel warranted in seeking for reasons to justify the taking of jurisdiction in these cases, even if any could be found.

The demurrers to the three bills will be sustained and as to *the* protests, in so far as they can be construed as an application for license for the respective businesses named, they will be sustained. The protests will be ignored, and unless an appeal shall be taken from the decree rendered in conformity with this opinion within the time prescribed by law, the clerk will be directed and ordered to pay into the United States Treasury the several sums of money paid into the registry of this court by the respective complainants and protestants. Let a decree be entered in conformity herewith.

Endorsed: Opinion of court. Filed Dec. 30, 1899. Albert D. Elliot, clerk.

15 And afterwards the following order & decree was made & entered in said cause & is in words & figures following, to wit:

In the District Court of the United States for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA TREADWELL GOLD MINING CO. } No. —.

JOHN W. ROBERTS
vs.
C. F. MEYERS ET AL. } No. —.

CHARLES STEWART
vs.
THE WASHINGTON & ALASKA STEAMSHIP CO. } No. —.

And protests by—
The Alaska Steamship Co.,
The Pacific Coast Co.,
The Pacific Coast Steamship Co.,
The Alaska Packers' Association,
The Pacific Steam Whaling Co.

Decree.

The above-mentioned suits and protests came on regularly to be heard at the adjourned November, 1899, term of this court, at

Juneau, in said district. By consent of counsel, all of said suits and matters were heard and argued together, and at one time.

All and each of said suits and protests were argued by counsel, and therefore the court being fully advised, and after due consideration thereupon, it is ordered, adjudged and decreed by the court, that in the cases of A. W. Corbus *vs.* The Alaska Treadwell Gold Mining Co., John W. Roberts *vs.* C. F. Meyers *et al.*, and Charles Stewart *vs.* The Washington & Alaska Steamship Co., and each of them, the demurrers are sustained, and that the bills in said cases and each of them be, and the same are, hereby dismissed with costs in each case against the plaintiff, to be taxed by the clerk.

And in each of said suits in which defendants have deposited with the clerk of this court a sum equal to the amount required by law for a license to conduct the business in which said defendant is engaged, the clerk of this court is hereby directed to issue such license, and cover said sum or sums of money into the Treasury of the United States, unless an appeal be taken within sixty days.

In the matter of the protests of the Alaska Steamship Co., the Pacific Coast Co., the Pacific Coast Steamship Co. (3), the Pacific Steam Whaling Co., the Alaska Packers' Association, where the same can be construed into an application for a license under the law for conducting the several businesses therein described the clerk is directed to issue such license in each instance, and turn

16 said sums of money into the Treasury of the United States.

So far as said protestants seek relief against the payment of a license on the several businesses therein described, the same is overruled, denied and ignored in each case of protest.

This order and decree will be entered by the clerk in each suit and in the matter of each protest.

CHARLES S. JOHNSON,
U. S. Dist. Judge.

(Endorsed:) Order & decree. Filed Jan. 2nd, 1900. Albert D. Elliot, clerk.

An exception to the foregoing judgment and decree asked for by each one of the foregoing and within defendants and protestants and an exception is hereby allowed by the court.

Dated January the 2nd, 1900.

——— ———, *Judge.*

17 And afterwards the following notice of appeal was filed in said cause and is in words & figures following, to wit:

In the District Court of the United States for the District of Alaska.

In the Matter of the Application of THE PACIFIC STEAM WHALING COMPANY, a Corporation, for a License for the Steamship "Wolcott," Steamship Excelsior, the Steamship "Newport," and the Str. "Golden Gate," and Canneries, and Protest Thereon. Nos. —.

To Robert A. Friedrich, United States district attorney in and for the district of Alaska:

Take notice that the above applicant, petitioner or protestant The Pacific Steam Whaling Company, a corporation, conceiving itself aggrieved by the ruling, decision and decree of the above-entitled court, in the above-entitled matter and proceedings, all of which were objected to, and excepted to and allowed by the court, and by the decision made and filed by the said court in the said matter on the 2nd day of January, 1900, and the order and judgment entered thereon in the above-entitled court and filed herein on the same day in favor of the United States Government collecting the said license and tax mentioned in the said protest herein and against the protestant and applicant The Pacific Steam Whaling Company, a corporation in the above-entitled proceedings, does hereby appeal from the said decision, order and judgment and decree and rulings, to the Supreme Court of the United States, and the said protestant and petitioner or applicant prays that its appeal be allowed, and that a transcript of the record, rulings, proceedings, and papers upon which said final order, judgment and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

JNO. R. WINN,
Attorney for said Petitioner, Applicant, or Protestant.

Service acknowledged by service of copy Feb. 5, 1900.
ROBT A. FRIEDRICH,
U. S. Dist. Atty for Alaska.

JUNEAU, ALASKA, *February* —, 1900.

And now to wit, on this — day of February, 1900, it is ordered that the appeal be allowed as prayed for.

—— ——, *Judge.*

Endorsed: Notice of appeal. Filed Feb. 6, 1900. Albert D. Elliott, clerk.

18 And afterwards the following order was made & entered herein:

Notice of appeal having been this day served and filed in the matter of the application and protest for license of the steamship "City of Topeka" and the steamship Orizaba and steamship "Queen" by the Pacific Coast Steamship Company and the Pacific Steam Whaling Company in the matter of the application and protest for a license on its steamers and canneries, and the Pacific Coast Company for its steamer "Lady Lake" and public docks in Alaska, and a stay of proceedings asked, pending said appeal; the court grants

said stay of proceedings, and sets the supersedeas bond in each case in the amount of $250 each, and the said protestants and applicants are allowed until the 30th day of March, 1900, in which to file said supersedeas bond.

Dated this 6th day of February, 1900.

—— ——.

[Endorsed:] Original.

19 And afterwards the following order was made & entered herein:

In the District Court of the United States in and for the District of Alaska.

In the matter of the protests of the Pacific Coast Steamship Co., and the Pacific Coast Co., against taking out licenses on the steamship "Queen," "Orizaba," City of Topeka and wharves, etc., and the Pacific Steam Whaling Co., on its steamers and canneries, and in the matter and suit wherein the steamship "Farallon" by one of the parties interested is contesting the payment of licenses—the time for filing a stay and bond in each of said causes and matters is hereby extended to the 12th day of April, 1900.

CHARLES S. JOHNSON, *Judge.*

(Endorsed:) Filed Mar. the 17th, 1900. Albert D. Elliot, clerk.

Received a copy of the foregoing bill of exceptions, and assignment of error, and service of the same is hereby admitted.

Dated April the 6th, 1900.

ROBT A. FRIEDRICH,
U. S. Dist. Attorney for Alaska.

[Endorsed:] Original.

20 And afterwards the following bond was filed in said cause:

In the District Court of the United States for the District of Alaska.

In the Matter of the Application of THE PACIFIC STEAM WHALING COMPANY for a License for the Steamship "Wolcott," the Steamship "Excelsior," the Steamship "Golden Gate," and the Steamship "Newport," and "Canneries," and Protest Thereon.

Know all men by these presents that we, The Pacific Steam Whaling Company, a corporation, the above protestant, and S. Blum, of Juneau, district of Alaska, are held and firmly bound unto the United States in the sum of $250 to be paid to the United States or into the Treasury thereof, or to its officers and agents for the uses and benefit thereof, or to its successors in office; and—which payment well and truly — be made we bind ourselves, and each of us, our and each of our successors, and our successors in office, heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 27th day of March, 1900.

Whereas, the above-named Pacific Steam Whaling Company, a corporation, has appealed to the United States Supreme Court at Washington, from a decree and judgment in favor of the United States, made and entered on the 2nd day of January, 1900, in the above-entitled protest and proceedings, by the district court of the United States for the district of Alaska, to reverse said judgment and decree so rendered.

Now therefore, the condition of the above obligation is such that if the above-named Pacific Steam Whaling Company herein, shall prosecute said appeal to effect, and answer all damages and costs, if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and effect.

PACIFIC STEAM WHALING CO.,
By H. T. ROBINSON, *Agent.*
S. BLUM.

UNITED STATES, }
District of Alaska, } ss:

I, S. Blum, being first duly sworn on oath depose and say: that I am the surety mentioned on the foregoing and with- bond on appeal; that I am a resident of the district of Alaska, and worth the sum of $500 over and above all my just debts, liabilities and property exempt from execution under the laws of the district of Alaska.

S. BLUM.

Subscribed and sworn to before me this 29th day of Mar., 1900.

[SEAL.] JNO. R. WINN,
Notary Public for Alaska.

The within bond is hereby approved this — day of ——, 1900.
—— ——, *Judge.*

Endorsed: Bond. Filed April 2, 1900. Albert D. Elliot, cl'k.

21 The appeal in the foregoing and entitled proceedings is hereby allowed. Dated this 30th day of March, 1900.
CHARLES S. JOHNSON, *Judge.*

The foregoing and hereto attached bill of exceptions examined and allowed. Dated this 30 day of March, 1900.
CHARLES S. JOHNSON, *Judge.*

The bond on appeal herein examined and approved, this 30 day of March, 1900.
CHARLES S. JOHNSON, *Judge.*

22 *Original Citation.*

In the District Court of the United States for the District of Alaska.

In the Matter of the Application of THE PACIFIC STEAM WHALING COMPANY for License for Steamships and Canneries in the District of Alaska, and Protest Thereon.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Robert A. Friedrich, district attorney of the United States for the district of Alaska, and the United States, Greeting:

You are hereby cited and admonished to be and appear at a term of the United States Supreme Court at Washington to be held on the 2nd Monday of October, 1900, next, pursuant to an appeal served herein and filed in the clerk's office of the district court of the United States, at Sitka, in that certain proceeding and action in which The Pacific Steam Whaling Company, a corporation, is protestant and appellant, and The United States and you are appellees, to show cause, if any there be, why the said judgment in the said appeal mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 30th day of March, 1900.

CHARLES S. JOHNSON,
Dist. Judge of the United States.

[Seal United States District Court, Alaska.]

Attest: ALBERT D. ELLIOT, *Clerk.*

Copy of the foregoing citation received, and service admitted this 6th day of April, 1900.

ROBT A. FRIEDRICH,
Dist. Attorney of the United States for Alaska.

[Endorsed:] Original citation. Filed April 6, 1900. Albert D. Elliot, clerk.

23 And afterwards the following stipulation was filed in said cause & is in the words & figures following, to wit:

In the District Court of the United States for the Dist. of Alaska.

A. W. CORBUS
vs.
THE ALASKA TREADWELL GOLD MINING CO.

JOHN W. ROBERTS
vs.
C. F. MEYER ET AL.

CHARLES STEWART
vs.
THE WASHINGTON & ALASKA STEAMSHIP CO.

And protests by:
The Alaska Steamship Co.,
The Pacific Coast Steamship Co.,
The Pacific Coast Co.,
The Pacific Steam Whaling Co.,
The Alaska Packers' Association.

It is hereby stipulated and agreed by and between the solicitors and attorneys of A. W. Corbus, John W. Roberts, Charles Stewart, the above-named plaintiffs and complainants, and the protestants, the Alaska Steamship Co., the Pacific Coast Steamship Co., the Pacific Coast Co., the Pacific Steam Whaling Co., and the attorneys and solicitors for the Alaska Treadwell Gold Mining Co., C. F. Meyers, *et al.*, the Washington & Alaska Steamship Co., and Rob't A. Friedrich, United States district attorney for Alaska; that at the time of the rendition of the opinion and the signing and filing and rendition of the final decree in said cause, that an exception was asked and allowed to the same and each of the same, but by mistake was not entered of record, and it is hereby stipulated and agreed that the exception may be entered of record as of January the 2nd, 1900.

JNO. R. WINN,
Att'y Pacific Coast Co., Pac. Coast S. S. Co., and Pacific Steam Whaling Co.
F. D. KELSEY,
Att'y C. F. Meyer et al.
MALONY & COBB,
Solicitors for A. W. Corbus.
LYONS — LYONS,
Att'y- for Wash. — Alaska Steamship Co.
M. E. McENANY,
Solicitor for Alaska Treadwell Gold Mining Co.
ROB'T A. FRIEDRICH, *U. S. Att'y.*
J. G. HEID,
Att'y for Complainant Chas. Stewart.

The foregoing exception was asked by the respective parties in interest and against whom the said opinion was rendered and said

decree entered at the time and in the manner indicated in the foregoing stipulation.

CHARLES S. JOHNSON,
The Trial Judge, Now ex-Judge of the Above-entitled Court.

(Endorsed:) Stipulation. Filed April 16, 1900. Albert D. Elliot, clerk.

24 In the District Court of the United States for the District of Alaska.

In the Matter of the Application of THE PACIFIC STEAM WHALING COMPANY for a License for the Steamship "Wolcott," the Steamship "Excelsior," the Steamship "Newport," and the Steamer "Golden Gate," and Canneries, and Protests Thereon.

Clerk's Certificate.

I, Albert D. Elliot, clerk of the district court of the United States in and for the district of Alaska, do hereby certify the foregoing, consisting of pages from one to —, inclusive, to be a full, true, and correct copy of all the records and proceedings in the above and therein entitled cause or proceedings, as the same remains of record and on file in the office of the clerk of said court, and that the same constitutes the full and complete record of said matter, cause or proceedings.

And I further certify that the cost of the foregoing record and proceedings, has been paid in full by the appellant in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said district court of the United States for Alaska, this first day of May, 1900.

[Seal United States District Court, Alaska.]

ALBERT D. ELLIOT,
Clerk of the District Court of the United States for the District of Alaska.

Endorsed on cover: File No. 17,879. Alaska D. C. U. S. Term No. 139. The Pacific Steam Whaling Company, appellant, *vs.* The United States. Filed August 18th, 1900.